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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/562,013

12/23/2005

Francesco Makovec

Q91867

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23373 7590 06/10/2009  
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EXAMINER

KATAKAM, SUDHAKAR

ART UNIT

PAPER NUMBER

1621

MAIL DATE

DELIVERY MODE

06/10/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



## **DETAILED ACTION**

### ***Status of the application***

1. Receipt of Applicant's Remarks and Arguments filed on 10<sup>th</sup> March 2009 is acknowledged.

### ***Response to Arguments***

2. Applicant's arguments filed on 10<sup>th</sup> March 2009 have been fully considered but they are not persuasive.

Examiner acknowledges applicants' argument that even if the references were somehow combined, the claimed invention would not be achieved.

Examiner noticed the following note in the specification (page 10):

Note: The particle sizes given both in the text and in the claims are not absolute quantities but are relative to the measurement method used (in this case the Malvern Master Sizer 3000 instrument with the method described in Example 1).

Applicants clearly mentioned that the particle size is relative not absolute in their specification. Therefore, it is impossible to compare applicants' data with the prior art and to understand applicants superior results.

Applicants are invited to provide more information to support their data.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-2 and 4-15 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Makovec et al. (US 5,130,474), in view of Midler et al. (US 5,314,506), further in view of Green (US 7,122,083) for the reasons of record set forth in the office action on 10<sup>th</sup> Oct 2008.

6. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136 (a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no even, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Conclusion***

7. No claim is allowed.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sudhakar Katakam whose telephone number is 571-272-9929. The examiner can normally be reached on M-F 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Sullivan can be reached on 571-272-0779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sudhakar Katakam/  
Examiner, Art Unit 1621

/Peter G O'Sullivan/  
Primary Examiner, Art Unit 1621

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